

# **BOARD OF DESIGN REVIEW MINUTES**

**November 20, 2003**

**CALL TO ORDER:** Chairman Mimi Doukas called the meeting to order at 6:30 p.m. in the Beaverton City Hall Council Chambers at 4755 SW Griffith Drive.

**ROLL CALL:** Present were Chairman Mimi Doukas; Board Members Cecilia Antonio, Ronald Nardoza, Jennifer Shipley, and Jessica Weathers. Board Members Hal Beighley and Stewart Straus were excused.

Senior Planner John Osterberg, Associate Planner Liz Jones, and Senior Transportation Planner Don Gustafson represented staff.

## **VISITORS:**

Chairman Doukas read the format for the meeting and asked if any member of the audience wished to address the Board on any non-agenda item. There was no response.

## **STAFF COMMUNICATIONS:**

Staff indicated that there were no communications.

## **OLD BUSINESS:**

### **CONTINUANCES:**

Chairman Doukas opened the Public Hearing and read the format of the hearing. There were no disqualifications of Board Members. No one in the audience challenged the right of any Board Member to hear any agenda items or participate in the hearing or requested that the hearing be postponed to a later date. She asked if there were any ex parte contact, conflict of interest or disqualifications in any of the hearings on the agenda.

## **I. DR 2003-0005 – CANYON TOWN CENTER RETAIL BUILDING DESIGN REVIEW**

(Continued from November 6, 2003)

The applicant requests Design Review 3 approval for the site, including a proposed speculative retail building, approximately 6,000 square feet in size, with associated parking and landscaping improvements.

Associate Planner Liz Jones presented the Staff Report and entered into the record a letter and informational packet submitted by the applicant's attorney Steven L. Pfeiffer of *Perkins Coie*, dated October 20, 2003. She also submitted into the record a packet of information with recommended language for a Condition of Approval that was submitted by the opponent's attorney, Larry Derr of *Josselson, Potter & Roberts*. Concluding, she noted that staff has no additional comments or documentation to submit into the record, adding that staff recommends approval of the application with recommended Conditions of Approval, and offered to respond to questions.

**APPLICANT:**

**STEVEN PFEIFFER**, representing *Perkins Coie* explained that the applicant's position is that the area of the curb cut was at one point the subject of an access, observing that there are legal documents and easements that have been extended to the owner of the property to the south. He pointed out that those easements had expired approximately one month ago, emphasizing that the right of access disappeared with the easement. He explained that the City of Beaverton is in no position to require the applicant to provide this access to this property owner who did not take advantage of an opportunity to continue the easement, adding that it is not the applicant's responsibility to provide or participate in any solution to their problem. Observing that the applicant has been unable to reach any agreement with this property owner since the previous meeting, he offered to respond to questions.

Chairman Doukas pointed out that the Board of Design Review is responsible for design review, rather than the review of easements, noting that she is concerned with the lack of a stub access point, which would be required of any other application.

Mr. Pfeiffer pointed out that the City of Beaverton has no basis to require or force the applicant to accommodate the adjacent property owner's traffic, adding that this does not involve the applicant's impact. Observing that this gas station is a non-conforming use and might change in the future, he expressed his opinion that the users of this gas station would serve only to clutter up the site and create conflicts with the uses of the applicant's site.

Chairman Doukas explained that if the situation involved a restricted or limited access to SW Lombard Street, the applicant could be required to share an access on common property.

Mr. Pfeiffer expressed his opinion that this situation is reasonable with regard to requiring a shared access.

**TAMIO FUKUYAMA**, architect for the applicant, discussed internal circulation and ownership issues.

Chairman Doukas pointed out that the Board has a responsibility to look beyond ownership boundaries and consider the interaction and relationships with surrounding properties.

**PUBLIC TESTIMONY:**

**LARRY DERR** of *Josselson, Potter & Roberts*, representing the lessees of the service station, Bob and Katie Barman, pointed out that he is no longer speaking on behalf of *Phillips Conaco*, the title holder to the property. He noted that this is a situation where good planning and legal authority are both involved and expressed his opinion that a solution is available that would address the needs of everyone concerned. He explained that this proposal would serve to close the driveway that opens up into the service station driveway, noting that criteria requires that the proposal will not obstruct and identify an existing vehicular connection. He discussed shared circulation and provided a brief history of the relationship between the two properties, the shared access, and reciprocal easement agreement. He emphasized that it is debatable whether the document that had been entered into in January 1989 is terminated, adding that he agrees that this decision is not the responsibility of the Board. He pointed out that the easement is perpetual except for *Unocal's* rights with respect to Parcel 5 (the subject property) insofar as they relate to its lessee's interests, noting that it is interesting that the applicant still retains the right to cross the service station property. Concluding, he expressed his opinion that the application should be denied and offered to respond to questions.

Ms. Doukas reiterated that the Board has no authority with regard to any decision pertaining to the easement, emphasizing that for the purpose of reaching a decision on this application, it is necessary to assume that this easement does not exist.

Mr. Derr pointed out that the Board would be making a legal determination by assuming that this easement does not exist.

Ms. Doukas advised Mr. Derr that if it is determined that the easement does exist at some future point, and the applicant has taken this action in spite of this easement, he would have the opportunity for legal recourse, emphasizing that this would be resolved through the court system. She explained that the decision with regard to the application would be based upon Development Code standards.

**APPLICANT REBUTTAL:**

Mr. Pfeiffer disagreed with the statement that the applicant is attempting to close the driveway on the service station property, noting that the curb would only be constructed on property belonging to the applicant. He reiterated that while they had been told to obtain a cross-access easement, they had allowed this easement

to lapse, noting that there is no way to determine whether this had been done in hopes of obtaining this access through this process at no cost. He agreed that the owner of the service station has the option of exercising their rights in court, expressing his opinion that the burden of proof with regard to this easement is their own responsibility, rather than that of the applicant or the City of Beaverton.

Ms. Jones referred to an extended curb that is shown within the right-of-way in front of the service station property, noting that the Transportation Division has reviewed the situation and determined that if the remaining portion of the access were to remain open, it would not meet City standards, adding that this would not be a safe condition.

Mr. Pfeiffer discussed the access on Lombard, noting that approximately half of this access would be eliminated with this approval.

Senior Transportation Engineer Don Gustafson stated that the shared access drive is  $\frac{3}{4}$  on the applicant's property and that eight or nine feet of this access is located on the property of the service station on the south. He explained that the applicant is being requested to construct a curb to remove the driveway approach within the street right-of-way in order to address safety issues.

Mr. Nardozza questioned whether any minimum setback standard is involved.

Mr. Gustafson advised Mr. Nardozza that no minimum setback standard is involved, observing that there are considerations with regard to existing accesses and situations relating to a potential hardship.

On question, Mr. Pfeiffer observed that the Oregon Department of Transportation (ODOT) has no jurisdiction over Lombard, which is a City street.

Chairman Doukas questioned whether the service station is a permitted or non-conforming use within this zone.

Ms. Jones pointed out that while the Staff Report indicated that the service station is a non-conforming use within this zone, this has not yet been confirmed. She noted that if a permitted use existed prior to the date of the ordinance it can be considered a conforming use.

Ms. Weathers referred to page 12 of the Staff Report, specifically Development Code Section 40.20.15.3.C.5, as follows: "...that there is a desirable, efficient, and workable interrelationship among buildings, building entrances, transit stops, transit facilities and routes, parking, loading areas, circulation, open spaces, landscaping, and related activities and uses on the site." She requested clarification with regard to how this specific criterion has been met.

Ms. Jones provided a brief explanation of how the specific criterion had been met.

Chairman Doukas pointed out that she is struggling with adequate access and adverse impacts to on-site circulation.

Emphasizing that the service station is not included in this specific application, Ms. Jones pointed out that this review involves only the proposal for the shopping center on the subject site.

Mr. Gustafson explained that the adjoining property has had ample opportunity to provide input, adding that with the expiration of the access easement, they had relinquished their legal right for the use of that portion of the driveway that is located on the applicant's property.

Ms. Weathers questioned the Board's authority to make a decision on an application that would cause an adjacent use and property to be noncompliant.

Ms. Jones suggested that no evidence had been submitted into the record to demonstrate this and that this issue would require speculation and should also be addressed by the City Attorney.

The public portion of the Public Hearing was closed.

Ms. Jones suggested that the Board should consider some items the Board mentioned during the previous meeting with regard to landscaping species, spacing, and entrances to the building.

Ms. Shipley mentioned the proposed grass species, noting that either the landscape architect should have some alternate proposal or the Board should make some recommendation with regard to this issue.

Chairman Doukas expressed her opinion that it is necessary to be proactive with regard to this issue.

Observing that she has no objection to the grass species that had been proposed, Ms. Shipley pointed out that while the proposal provides that this grass be located two feet on center, this particular species is very fountain-like and can reach a height and width of five feet. Noting that this would not be appropriate next to a parking space, she explained that this would not be attractive and would also interfere with the parking space and suggested that it would be feasible to relocate these plants and space them further apart.

Chairman Doukas questioned whether Ms. Shipley would prefer to revise the spacing or change the species.

Ms. Shipley suggested that while some of these plants would be appropriate, she would prefer to replace them with a different species.

Ms. Weathers referred to Development Code Section 40.20.15.3.C, which pertains to trees.

Chairman Doukas advised Ms. Weathers that this issue is addressed through Condition of Approval No. 21.

Ms. Weathers pointed out that she still has concerns with Criteria Nos. 3, 4, and 5, pertaining to the driveway, emphasizing that the proposal should not obstruct an existing vehicular connection.

Chairman Doukas expressed her opinion that the testimony provided indicates that the applicant has submitted a proposal and supported this proposal with evidence and findings, adding that the application meets applicable criteria and that she has seen no evidence indicating otherwise. She pointed out that the Board has certain criteria with regard to which evidence can be considered with regard to making a decision.

Ms. Weathers noted that Criteria 3, 4, and 5 indicates to her that this proposal is obstructing an existing driveway, adding that she is willing to accept the interpretation provided by staff.

Chairman Doukas explained that the proposal does not serve to land-lock the parcel and that all access has not been eliminated, adding that this is a clear distinction with regard to the functionality of the application. Observing that the access to Lombard would be eliminated, she pointed out that she is more concerned with access through the drive-aisle to the south, which is an existing circulation pattern. She reiterated that all access has not been eliminated, adding that there is a potential for further north/south access through private agreement.

Mr. Gustafson noted that staff had reviewed this issue in regard to vision clearance and had not felt that this building would create a hardship for the property to the south, adding that it should be possible to create a safe access.

Ms. Shipley **MOVED** and Mr. Nardozza **SECONDED** a motion for **APPROVAL** of DR 2003-0005 – Canyon Town Center Retail Building Design Review, based upon the testimony, reports and exhibits presented during the public hearings on the matter and upon the background facts, findings and conclusions found in the Staff Report dated October 23, 2003, including Conditions of Approval Nos. 1 through 24, and including additional Condition of Approval, as follows:

25. Prior to the issuance of Site Development permits, the applicant shall submit a revised landscape plan that illustrates the substitution of Pennisetum a. 'Hameln' ornamental grass for the Maiden Grass originally proposed on the plan. The Hameln ornamental grass

shall be installed with the original spacing illustrated on the plan and shall be a minimum container size of 1 gallon at planting.

Motion **CARRIED** by the following vote:

**AYES:** Shipley, Nardozza, Antonio, Weathers, and Doukas.  
**NAYS:** None.  
**ABSTAIN:** None.  
**ABSENT:** Beighley and Straus.

**APPROVAL OF MINUTES:**

The minutes of October 30, 2003, as written, were submitted. Chairman Doukas asked if there were any changes or corrections. Mr. Nardozza **MOVED** and Ms. Shipley **SECONDED** a motion that the minutes be adopted as written and submitted.

The question was called and the motion **CARRIED** unanimously.

**MISCELLANEOUS BUSINESS:**

The meeting adjourned at 8:00 p.m.